

(b) (7)(E)



**U.S. Customs and
Border Protection**

DEC 10 2014

MEMORANDUM FOR: All Chief Patrol Agents
All Division Chiefs
(b)(6) (b)(7)(c)

FROM: Michael J. Fisher
Chief
U.S. Border Patrol

SUBJECT: Exercising Prosecutorial Discretion with Respect to Individuals
Who Came to the United States as Children and with Respect to
Certain Individuals Who Are the Parents of U.S. Citizens or
Permanent Residents

Please see the attached Department of Homeland Security (DHS) memorandum, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents*. This November 20, 2014 memorandum reflects new policies for the use of deferred action. It supplements and amends DHS's June 15, 2012 guidance, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*.

The attached memorandum expands certain parameters of deferred action. It issues guidance for the case-by-case use of deferred action for those adults who (b) (7)(E)

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(b) (7)(E) in accordance with DHS's November 20, 2014 memorandum, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, which is also attached.

Staff may direct questions to Chief of Staff (b)(6) (b)(7)(c) at (b)(6) (b)(7)(c)

Attachments



**U.S. Customs and
Border Protection**

September 6, 2017

MEMORANDUM FOR: All Chief Patrol Agents
All Directorate Chiefs (b) (6), (b) (7)(C)

FROM: Carla L. Provost
Acting Chief (b) (6), (b) (7)(C)
U.S. Border Patrol

SUBJECT: Guidance on the Acting Secretary's Rescission of the
Memorandum of June 15, 2012, Establishing DACA

On September 5, 2017, the Acting Secretary of Homeland Security issued a memorandum rescinding the June 15, 2012, memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who came to the United States as Children," which established a program known as the Deferred Action for Childhood Arrivals (DACA). The Attorney General sent the Department a letter on September 4, 2017, explaining that although such an "open-ended circumvention of immigration laws [by DACA] was an unconstitutional exercise of authority," the Department should still "consider an orderly and efficient wind-down process [of the program]."

As part of that orderly wind-down process, USCIS will no longer accept new DACA applications after September 5, 2017. Documents from current beneficiaries that have been accepted as of September 5, 2017, and from current beneficiaries whose benefits will expire between September 5, 2017, and March 5, 2018, that have been accepted as of October 5, 2017, will be processed. USCIS will reject all requests to renew DACA and associated applications for employment authorizations filed after October 5, 2017.

Agents are reminded that, consistent with existing guidance, all individuals who are encountered by U.S. Border Patrol and are believed to have entered illegally or are out of status at the time of the encounter must be appropriately processed, including all appropriate system checks. Although individuals may have been given deferred action under the DACA program, agents are reminded that deferred action is not, and even under DACA was not, lawful immigration status. Thus, agents must determine for any individual, consistent with the guidance set forth below, whether removal proceedings are appropriate.

When an individual who claims to have DACA is encountered, an agent must first process the individual through (b) (7)(E). An individual who has a pending application (that is, it has been accepted by USCIS for processing) for DACA or DACA renewal should be processed as if they have deferred action under DACA, absent derogatory information. If the individual claims to have DACA but does not have documentation of DACA physically available at the time of

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**U.S. Customs and
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January 04, 2018

MEMORANDUM FOR: Manuel Padilla, Jr. (b) (6), (b) (7)(C)
Chief Patrol Agent
Rio Grande Valley Sector (b) (6), (b) (7)(C)
FROM: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)
Patrol Agent in Charge (b) (6), (b) (7)(C)
Harlingen Border Patrol Station

SUBJECT: DACA Re-Encounter

All Supervisory personnel and agents currently assigned to the Harlingen Border Patrol Station have been briefed regarding the memorandum from Chief Patrol Agent Manuel Padilla, Jr. titled, "DACA Re-Encounter."

A signature sheet will be kept on file to indicate awareness of the guidance.

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**U.S. Customs and
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December 26, 2017

MEMORANDUM FOR: Patrol Agents in Charge (b) (6), (b) (7)(C)
Rio Grande Valley Sector (b) (6), (b) (7)(C)

FROM: Manuel Padilla, Jr. (b) (6), (b) (7)(C)
Chief Patrol Agent (b) (6), (b) (7)(C)
Rio Grande Valley Sector

SUBJECT: DACA Re-Encounters

In accordance with Acting Chief Carla L. Provost memorandum entitled, "Guidance on the Acting Secretary's Rescission of the Memorandum of June 15, 2012 establishing DACA," all Deferred Action for Childhood Arrivals (DACA) subjects encountered will be temporarily detained for DACA verification. Once DACA is substantiated and if no derogatory information is discovered, the subject will be processed and released accordingly.

In an effort to streamline and expedite the processing of all DACA subjects that are re-encountered, Rio Grande Valley Sector personnel will follow the guidance below:

- Creation of a new (b) (7)(E) each time the subject is encountered;
- Enrollment in (b) (7)(E)
- Verification of criminal history through system checks;
- Confirmation of DACA through (b) (7)(E) and
 - If DACA is confirmed and no derogatory information exists, subject is released.
- Temporary file not required to document encounter.

Documenting all DACA re-encounters will ensure DACA eligibility remains valid and no new derogatory criminal history exists since the last encounter.

Patrol Agents in Charge will ensure that uniformed personnel are informed of this update. Compliance memorandums must be submitted through official channels via (b) (7)(E) by linking responses to this request no later than January 4, 2018. Staff may direct questions related to this matter to Acting Assistant Chief Patrol Agent (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C)

Department of Homeland Security

Implementing the President's Border Security and
Immigration Enforcement Improvements Policies

and

Enforcement of the Immigration Laws to Serve the
National Interest



U.S. Customs and
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DHS Guidance

- On February 17, 2017, the Secretary of the Department of Homeland Security (DHS) issued the memoranda titled *“Implementing the President’s Border Security and Immigration Enforcement Improvements Policies”* and *“Enforcement of the Immigration Laws to Serve the National Interest.”*
- These new policies outline the implementation of the Executive Order 13767, entitled “Border Security and Immigration Enforcement Improvements,” and Executive Order 13768, entitled “Enhancing Public Safety in the Interior of the United States,” issued by the President on January 25, 2017.



DHS Guidance cont'd

- In fulfilling the President's Border Security and Improvement Policies, immediately, the U.S. Border Patrol will, effective immediately, begin implementing new policies to both stem the flow of illegal immigration and facilitate the detection, apprehension, and removal of aliens unlawfully present in the United States.
- With the exception of the June 15, 2012 memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," and the November 20, 2014 memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and With Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents," all existing conflicting directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal are hereby immediately rescinded; including, but not limited to, the November 20, 2014, memoranda entitled "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," and "Secure Communities."



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Priorities for Removal

USBP will take enforcement action against all illegal aliens encountered in the course of their duties who illegally enter, attempt to enter, or who do not have lawful status to be, or remain in, the United States. This includes the referral for criminal prosecution of any alien as appropriate as well as the initiation of removal proceedings against any alien who is subject to removal under any provision of the INA.

- As the referenced 2012 and 2014 DACA and DAPA memoranda remain in effect, along with applicable court orders, the DHS and CBP posture with respect to DACA and DAPA is not affected by issuance of the Secretary's memoranda of February 20, 2017.

USBP should take particular care to prioritize the removal of aliens who:

- have been convicted of any criminal offense;
- have been charged with any criminal offense that has not been resolved;



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Priorities for Removal cont'd

- have committed acts which constitute a chargeable criminal offense;
- have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency;
- have abused any program related to receipt of public benefits;
- are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or
- in the judgment of an immigration officer, otherwise pose a risk to public safety or national security.



Priorities for Removal cont'd

Aliens listed on the previous slides do not necessarily have to be placed in removal proceedings based on a criminal ground of inadmissibility or removability. Instead, USBP should prioritize individuals within the above priorities for removal proceedings within the lawfully available removable grounds. This may include those PWA. Sectors are encouraged to coordinate with ERO as needed.

The enforcement priority should be in accordance with the Border Patrol Consequence Delivery System in the following order of preference:

- (1) Expedited Removal (ER), if applicable,
- (2) Notice to Appear
- (3) Voluntary Return



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Plans to Implement Provisions of Section 235(b)(2)(C) of the INA to Return Aliens to Contiguous Countries

As set forth in INA 235(b)(2)(C), aliens arriving from Mexico or Canada that are processed via Notice to Appear may be returned to that country pending a hearing before an immigration judge.

(b)(7)(E)



U.S. Customs and
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Aliens In Custody

USBP will detain all aliens placed in removal proceedings until such time as the alien is transferred to another federal, state or local entity. Aliens who have been placed in expedited removal, including family units, may not be released or paroled from USBP's custody except where:

- The release is part of USBP's overall effort to removing or permitting the alien to depart from the United States.
- USBP determines the alien is a U.S. citizen, LPR, returning refugee, or asylee.
- USBP determines that the alien has received an order granting relief or protection from removal.



Aliens In Custody cont'd

- Where, in consultation with local Associate/Assistant Chief Counsel as may be appropriate, the release is determined to be required by statute, judicial order, or settlement.
- Parole is approved by the Sector Chief on a case by case basis, with the written concurrence of the Deputy Director of ICE and the Deputy Commissioner of CBP.
- Parole is necessary to address an emergent situation, such as (b)(7)(E) [REDACTED] the Sector Chief may permit parole, with notice to the Deputy Director of ICE or Deputy Commissioner of CBP as soon as practicable.



Parole/OR Authority Pursuant to Section 212(d)(5) and 236 of the INA

Requests for parole or other release should be submitted sparingly, and only in individual cases. Examples include:

- The release serves the best interests of the United States because of demonstrated urgent humanitarian reasons or significant public benefit.
- (b)(7)(E) [REDACTED]



Parole/OR Authority Pursuant to Section 212(d)(5) and 236 of the INA cont'd

All processing options must be explored prior to issuing a NTA/OR. Release from CBP custody on an alien's own recognizance (OR) may only occur where approved by the Chief Patrol Agent.

- Each time an alien is released OR, there must be clearly articulable circumstances to justify the release and those circumstances must be noted in the narrative section of the I-213.
- Prior to releasing any alien OR, every alternative must be explored and clearly articulated in the narrative section of the I-213.
- (b)(7)(E) then the Chief Patrol Agent will coordinate with Headquarters Border Patrol to reach an appropriate resolution prior to releasing the alien.



Expanding Expedited Removal Pursuant to Section 235(b)(1)(A)(iii)(I) of the INA

- The Secretary's memorandum contemplates the expansion of Expedited Removal on terms to be specified.
- This expansion may not be implemented until such time as a Federal Register notice is issued and further guidance is provided.

Training will provided to field staff once Headquarters Staff receives further guidance and instruction from DHS.



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Immigration Detainer Guidance

- USBP should continue working with other Federal, State and Local law enforcement agencies with regard to Immigration Detainers.
- USBP will continue to utilize existing detainer forms until such forms are replaced and disseminated to the field.



Where do I locate the forms?

- (b)(7)(E)
- Print Forms Section

(b)(7)(E)



U.S. Customs and
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CBP000052

UAC Processing and Treatment

- Agents will continue to follow the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) and the *Flores* Settlement Agreement, including all implementing policies and procedures, to ensure that all children, including unaccompanied alien children, are provided special protections to ensure that they are properly processed and receive the appropriate care and placement when they are encountered by USBP.
- Agents must complete Form 93 for all unaccompanied alien children.
- Mexican and Canadian unaccompanied alien children may be permitted to withdraw their application for admission and return to Mexico or Canada after proper coordination with the Mexican or Canadian Consulate has been completed.



UAC Processing and Treatment cont'd

- Unaccompanied alien children who are permitted to withdraw may be repatriated at the nearest port of entry to Mexican/Canadian Consulate officials at a time designated by the consulate official.



processing, the agent should either run (b) (7)(E) or, if the agent does not have access to (b) (7)(E) the agent should contact USCIS directly. If an agent determines that the individual does have deferred action through DACA, and that there is no derogatory information indicating other processing is appropriate, the individual should be permitted to depart the Border Patrol facility upon approval by the Chief Patrol Agent or his or her designee. If an agent determines that an individual does not have deferred action (through DACA or otherwise), the individual should be processed according to normal procedures.

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Individuals who may previously have been eligible for DACA but who, as of September 6, 2017, do not have a DACA application accepted for processing by the Department, should be processed according to normal procedures.

The rescission of DACA does not alter in any way the normal processing requirements for those who are encountered without lawful basis to enter or remain in the United States. For instance,

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(b) (7)(E) Similarly, agents must still comply with the requirements of the Trafficking Victims Protection Reauthorization Act (TVPRA), *Flores*, and all other legal and policy requirements in place.

This Guidance is not intended to, and does not, create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does it create any right of review in an administrative, judicial, or any other proceeding.